IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.Rev.Pet.No. 2948 of 2007()

CRA.35/2004 of ADDITIONAL SESSIONS COURT (ADHOC)-II, KOLLAM
CC.152/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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REVN. PETITIONER: APPELLANT/ACCUSED

B.SHAJI,
S/O.BHASKARAN, THOTTATHIL VEEDU,
THEKKEVILACHERRY, ERAVIPURAM VILLAGE,
KOLLAM.

BY ADV. SRI.R.SATISH KUMAR

RESPONDENTS: RESPONDENT/COMPLAINANT AND STATE

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1. C.T.JAYACHANDRAN,
'VISHNU', MUNDACKAL EAST VILLAGE, KOLLAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 2948 of 2007

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Dated: 08-08-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.152 of 2001 on the file of the J.F.C.M.-I, Kollam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has

been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. The trial court had imposed a sentence of simple imprisonment for three months and had directed the revision petitioner to pay the cheque amount of Rs.75,000/- as compensation under Section 357 (3) Cr.P.C.. The lower appellate court reduced the sentence of three months' simple imprisonment to simple imprisonment for one month and fixed the default sentence of simple imprisonment for thirty days in the event of default in payment of compensation. The learned counsel for the revision petitioner submitted that the revision petitioner has undergone the substantive sentence of simple imprisonment for one month as on today and prayed for leniency with regard to the default sentence. He has admittedly not paid the compensation ordered to be paid. Hence, there cannot be any leniency in the default sentence which is only simple imprisonment for thirty days. I see no ground to interfere with the default sentence.

This Revision is accordingly dismissed.

V. RAMKUMAR, JUDGE.

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